

Certified Access Specialist Program **Best Practices Manual**

May 2016



CERTIFIED ACCESS SPECIALIST PROGRAM (CASP) **BEST PRACTICES MANUAL**

INTRODUCTION

This handbook addresses best practices for the Certified Access Specialist (CASP). Information contained herein constitutes a guide and is not regulatory. The information is derived from federal guidance and from the recommendation of those with extensive experience in providing accessibility related services prior to the existence of the CASp Program. The CASp may elect to incorporate some or all of the best practices into his/her respective practice.

CONTACTING DSA

Website: www.dgs.ca.gov/casp

Mailing Address:

Division of the State Architect
CASP Program
1102 Q Street, Suite 5100
Sacramento, CA 95811

Email: CASprogram@dgs.ca.gov

Questions about examination and certification can be directed to the CASp Program Certification Line at (916) 323-2737.

Questions regarding the technical requirements of providing the services of a CASp should be directed to (916) 322-2490.

Questions regarding the accessibility provisions of Chapter 11B of the California Building Code should be directed to the DSA Technical Assistance Helpline at (916) 445-5827.

TABLE OF CONTENTS

I. INSPECTION REPORTS

Inspection Reports Provided by the Independent CASp.....	1
Impartial Determinations.....	2
Applicable Definitions	2

II. BEST PRACTICES

Pre-Evaluation Inquiry	5
Additional Recommendations for the Inspection Report.....	5
Issuance of the Schedule of Improvements.....	6
Display of Disability Access Inspection Certificates.....	6
Completion of Services.....	7
Work Assisted by Others Not Certified	7

III. CASp GUIDANCE

Use of CBC Terminology	8
ADA's Determination of Readily Achievable Barrier Removal	9
Availability of Tax Incentives for Access Improvements	10

IV. CASp RESOURCES

History of Disability Rights in California	11
California Laws Relating to Disability Access	11
California Legislation	12

I. INSPECTION REPORTS

Inspection Reports Provided by the Independent CASp

The minimum requirements of an inspection report are not specified by the CASp Program. There is implied, however, a minimum of two types of inspection reports a CASp can issue: an inspection report that is issued according to Civil Code 55.51-55.545 (Construction-Related Accessibility Standards Compliance Act, CRASCA) and an inspection report that is not issued according to CRASCA.

Inspection Reports Issued According to CRASCA

An inspection to the applicable standards and inspection report that is issued according to CRASCA offers legal benefits to a business/facility owner that hires a CASp and commits to achieving compliance according to an established schedule. CRASCA states specific content for the inspection report provided by a CASp if the report is a deliverable that provides "qualified defendant" status to a business/facility owner who hires a CASp for that purpose. Such requirements are stated in statute and in section VIII of the CASp Examination, Certification, and Practice Standards Handbook: CASp Inspection Reports Issued According to Civil Code 55.53. A CASp may review *Best Practices for Inspection Reports*, included herein, for information that may be relevant to include in the report, beyond the minimum requirements as specified in CRASCA.

As stipulated in CRASCA, an inspection report issued according to Civil Code 55.53 provides "qualified defendant" status only if the client has not yet been served a summons and complaint of a construction-related accessibility claim for the subject property requiring inspection. In addition, because the legal benefit offered by an inspection report issued according to CRASCA are established in California law, the "qualified defendant" status is recognized only in the California Court system and not in the United States Federal Court system.

Inspection Reports Not Issued According to CRASCA

If the CASp is providing services in which an inspection report is issued but the owner does not desire to be offered the legal benefits under CRASCA, reporting requirements are not specified and the applicable content is determined by the CASp. A CASp may review *Best Practices for Inspection Reports*, included herein, for information that may be relevant to include in the report.

Impartial Determinations

When providing an inspection of a facility and issuing an inspection report according to the requirements of CRASCA, it is recommended that a CASp be impartial. Facility inspections and inspection reports issued according to CRASCA are to the applicable standards. It is recommended that the CASp ask the owner of the construction history of the facility so that the applicable standards can be determined, in order to establish the basis of the inspection. If the applicable standards are unable to be determined, it is recommended that the CASp advise the owner that using current standards instead of the applicable standards may lead to additional improvements as a result of the more restrictive compliance requirements of current standards.

Applicable Definitions

The following definitions are applicable to the requirements as stipulated in CRASCA.

Inspected by a CASp means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards. *A site that received a determination of "CASp Determination Pending" before October 2012 means that the site was "inspected by a CASp."*

Meets applicable standards means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards. *A site that received a determination of "CASp Inspected" before October 2012 means that the site "meets applicable standards."*

Construction-related accessibility standard is a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including but not limited to any provision standard or regulation set forth in the *California Civil Code sections 51–55, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), and the federal Americans with Disabilities Act of 1990 (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).*

Readily achievable barrier removal is defined by the ADA (42 U.S.C. §12181(9); 28 C.F.R. §36.104.2) as *"easily accomplishable and able to be carried out without much difficulty or expense."* For further information, please see page 9.

Qualified defendant is a defendant in an action that includes a construction-related accessibility claim that is asserted against a place of public accommodation that met the requirements of “meets applicable standards” or “inspected by a CASp” prior to the date the defendant was served with the summons and complaint in that action. To be a qualified defendant, the defendant is not required to have been the party who hired any CASp, so long as the basis of the alleged liability of the defendant is a construction-related accessibility claim. To determine whether a defendant is a qualified defendant, the court need not make a finding that the place of public accommodation complies with all applicable construction-related accessibility standards as a matter of law. The court need only determine that the place of public accommodation has a status of “meets applicable standards” or “inspected by a CASp.” Notwithstanding any other law, upon being served with a summons and complaint asserting a construction-related accessibility claim, a qualified defendant may request a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action that includes the claim.

CA Civil Code 55.54 reduces the statutory damages paid by the owner who holds an inspection report issued according to CRASCA. The statutory damages are reduced from \$4000 minimum per occasion for violations encountered to a minimum of \$1000 per occasion for violations encountered. In addition, CA Civil Code 55.54 offers a court stay and early evaluation conference if:

- Until January 1, 2018, if a facility is of new construction or improvement approved through the local building permit and inspection process after January 1, 2008 and before January 1, 2016, and the defendant declares that there have been no modifications or alterations completed or commenced since approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served the complaint. Statutory damages reduced from \$4000 to a minimum \$1000 per occasion.
- If a facility is of new construction or has had improvements approved by a local building department inspector who is a CASp and the defendant declares that there have been no modifications or alterations completed or commenced since approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served the complaint. Statutory damages reduced from \$4000 to a minimum of \$1000 per occasion.

- If the business and/or facility owner is a small business that employs 25 or fewer employees and have gross receipts of less than \$3,500,000, and declares that all violations have been corrected, or will be corrected within 30 days of being served with the complaint. Statutory damages reduced from \$4000 to a minimum of \$2000 per occasion.

II. BEST PRACTICES

DSA provides the following as "best practices" for the inspection report.

Pre-Evaluation Inquiry

Prior to on-site evaluation, the basis of the evaluation may be determined from the following information if available. This list is not inclusive of items to be considered.

Pre-Evaluation Information to request from the client:

- Contact information of client and relationship to owner
- Type of property owner and type of client (whether public or private)
- Name and address of property
- Age of the facility (year built)
- Description of the facility including the nature of businesses in the facility
- History of improvements
- A description of the areas of the facility requested to be surveyed
- Identification of public accommodation areas within area surveyed

Additional Recommendations for the Inspection Report

The following information is recommended for inclusion in the inspection report with the intent that such information provides additional information for the owner and discloses further the information the CASp has used to determine compliance to construction-related accessibility standards. The CASp should use appropriate judgment with regard to inclusion of this additional information. Depending on the specifics of the facility evaluated, this information is not inclusive of all additional information that may be included for the inspection report.

The minimum requirements for a inspection report issued according to CRASCA are stipulated in Civil Code 55.53 and in section VIII of the *CASp Examination, Certification, and Practice Standards Handbook*. The following is additional recommended information to include in an inspection report if applicable and available:

- Date of evaluation
- Date of inspection report
- Contact information of client and relationship to owner
- An indication that the report is issued according to the requirements of CRASCA (if applicable)
- Type of property owner and type of client (whether public or private)
- Name and address of property

- Age of property (year built)
- Description of the facility including the nature of businesses in the facility
- History of improvements
- A list of the standards to which the facility was inspected and why they are applicable, or an indication that the inspection was to current standards and the reason for using current standards as the basis of inspection
- An explanation of a determination of *readily achievable barrier removal* and how such a determination is made
- A photo essay of non-compliant conditions
- A record of non-compliant measurements taken on-site
- CASp signature and CASp number

Issuance of the Schedule of Improvements

Civil Code 55.53 requires a schedule of completion for each of the corrections within a reasonable timeframe. While "reasonable" is not defined, "reasonableness" may take into consideration the costs incurred by the client to complete the work, which may include the involvement of design professionals, construction professionals, the permitting and inspection process, the ability to secure a loan from a financial institution if the owner so desires, or the ability to schedule the work in consideration of the owner's budgetary constraints. Under CRASCA, the owner's commitment to achieving compliance is demonstrated by the owner's adherence to the correction schedule; therefore, a CASp may work with the owner to establish a reasonable schedule, and the owner should understand that he/she is still exposed to having a claim filed while violations are being corrected or on violations that remain uncorrected.

Display of Disability Access Inspection Certificates

Disability access inspection certificate (DAIC) are only issued with a report issued according to CRASCA. CRASCA does not require the business and/or facility owner to post the DAIC on the premises, and reserves that right to the discretion of the business or facility owner. The CASp may recommend that the business have the DAIC available should an individual request proof of inspection and, according to CRASCA, may advise that inspection reports remain confidential. It is recommended that a business and/or facility owner should not provide the inspection report as evidence of proof of inspection to anyone unless advised by legal counsel.

A business or facility owner that elects to post the DAIC at the premises may be advised by the CASp to post a color copy and retain the original in safekeeping. A numbered DAIC is linked to a inspection report issued according to Civil Code 55.53, therefore, if issuance of

a replacement is necessary, its issuance may necessitate documentation on the DAIC record that it is issued as a replacement of an original certificate.

Completion of Services

Upon completion of the inspection and along with the inspection report issued according to CRASCA, Civil Code 55.53 requires the CASp to provide the business/facility owner with a DAIC purchased from DSA, and a *Notice to Property Owner/Tenant* regarding safekeeping of Inspection Reports.

In addition, according to Civil Code 55.53(e), the CASp shall record the number of the issued DAIC, the name and address of the recipient, and the determination of the CASp Inspection Report issued (either “meets applicable standards” or “inspected by a CASp”) in a record book.

The CASp is not required by CRASCA to provide a final inspection of the site after completion of improvements in order for the business and/or facility owner to receive or maintain "qualified defendant" status, however, if one is requested, it is recommended that it be specified in the scope of services in the Agreement, or as an amendment to the Agreement.

Work Assisted by Others Not Certified

CASp may utilize the assistance of others not certified in the course of an inspection of a facility. Issuance of an inspection report issued according to the requirements of Civil Code 55.53, however, requires the CASp to sign and date a statement with a determination based on the result of the inspection. DSA reminds the CASp that, according to CASp Program Regulations, the signature of the CASp on an inspection report or inspection record shall signify that the CASp has been on the subject site as part of the scope of services and can confirm the information stipulated in the inspection report or inspection record.

III. CASp GUIDANCE

Use of CBC Terminology

The CASp is reminded that the following terminology is defined in Chapter 2 of Part 2 of the California Building Code (CBC), and when used in an inspection report, will be defined accordingly:

Technically Infeasible: An alteration of a building or a facility that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

Where the enforcing authority determines compliance with applicable requirements is technically infeasible, the alteration shall provide equivalent facilitation or comply with the requirements to the maximum extent feasible. The details of the finding that full compliance with the requirements is technically infeasible shall be recorded and entered into the files of the enforcing agency.

Unreasonable Hardship: When the enforcing agency finds that compliance with the building standard would make the specific work of the project affected by the building standard infeasible, based on an overall evaluation of the following factors:

1. *The cost of providing access.*
2. *The cost of all construction contemplated.*
3. *The impact of proposed improvements on financial feasibility of the project.*
4. *The nature of the accessibility which would be gained or lost.*
5. *The nature of the use of the facility under construction and its availability to persons with disabilities.*

The details of any finding of unreasonable hardship shall be recorded and entered in the files of the enforcing agency.

ADA's Determination of Readily Achievable Barrier Removal

The Americans with Disabilities Act requires Title III entities (public accommodations and commercial facilities) built prior to January 26, 1992 to remove barriers if "readily achievable to do so." "Readily achievable barrier removal" is defined by the ADA as "*easily accomplishable and able to be carried out without much difficulty or expense.*" "Readily achievable barrier removal" is not applicable to Title II facilities (state and local governments).

As provided by the Americans with Disabilities Act, determinations as to which barriers can be removed without much difficulty or expense must be made on a case-by-case basis. A determination of *readily achievable barrier removal* is made with a comprehensive understanding of the factors to be considered. In determining whether an action is readily achievable factors to be considered, per 42 U.S.C. §12181(9)(A) - (D), and 28 C.F.R. §36.104, include:

- (1) The nature and cost of the action needed under this part;*
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;*
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;*
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and*
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.*

The Americans with Disabilities Act contains a list of 21 examples of modifications that may be readily achievable:

1. Installing ramps;
2. Making curb cuts in sidewalks and entrances;
3. Repositioning shelves;
4. Rearranging tables, chairs, vending machines, display racks, and other furniture;
5. Repositioning telephones;
6. Adding raised markings on elevator control buttons;
7. Installing flashing alarm lights;

8. Widening doors;
9. Installing offset hinges to widen doorways;
10. Eliminating a turnstile or providing an alternative accessible path;
11. Installing accessible door hardware;
12. Installing grab bars in toilet stalls;
13. Rearranging toilet partitions to increase maneuvering space;
14. Insulating lavatory pipes under sinks to prevent burns;
15. Installing a raised toilet seat;
16. Installing a full-length bathroom mirror;
17. Repositioning the paper towel dispenser in a bathroom;
18. Creating designated accessible parking spaces;
19. Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
20. Removing high pile, low density carpeting; or
21. Installing vehicle hand controls.

Additionally, *readily achievable barrier removal* applies to facilities in compliance with the 1991 Standards with regard to those elements in the 2010 ADA Standards that were not previously addressed in the 1991 Americans with Disabilities Act Accessibility Guidelines (1991 ADAAG).

Civil Code 55.53 does not require the CASp to make a determination of *readily achievable barrier removal*; the statute only requires the CASp to clearly indicate whether the CASp has made such a determination in the inspection report. If the CASp does not have a comprehensive understanding of the factors to be considered as they relate to the client, then the CASp may advise the client about the factors to be considered, how a determination is made, and place the responsibility of determination on the client.

Availability of Tax Incentives for Access Improvements

- A CASp may inform the client of tax incentives available to businesses to help cover the cost of making access improvements. Information is provided in a brochure available at the ADA.gov website accessed by the following link:
<http://www.ada.gov/archive/taxpack.pdf>.

IV. CASp RESOURCES

History of Disability Rights in California

1959 - Unruh Civil Rights Act - CA Civil Code 51 and 52

Prohibits businesses from discriminating against individuals.

Allows for monetary damages in addition to injunctive relief.

Allows a minimum \$4000 damages per violation plus attorney's fees.

1968 - Disabled Persons Act (DPA) - CA Civil Code 54

Protects right of equal access to public accommodations.

1982 - Requirements for Accessibility included in the California Building Code

1992 - Amendments to the DPA - CA Civil Code 54(c)

States that a violation of the ADA is a violation of the DPA and the Unruh Act.

California Laws Relating to Disability Access

Including the above statutes, all text of California Law can be accessed online at leginfo.legislature.ca.gov. This list is not intended to be inclusive.

Access to assembly areas by individuals with disabilities

Health and Safety Code 19952–19954.5

Access to public accommodations by individuals with disabilities

Health and Safety Code 19955–19959.5

Requirements for accessibility in the California Building Code

Government Code 4450–4461

California Commission on Disability Access

Government Code 8299–8299.11

Covered Multifamily Dwellings

Government Code 12955.1–12955.1.1

Construction-Related Accessibility Standards Compliance Act

Civil Code 55.51–55.545

Statutory Damages in Construction-Related Accessibility Standards Claims

Civil Code 55.55–55.57

Disclosure of CASp Inspection and Determination in Lease Agreements

Civil Code 1938

Requirements for Plaintiff's Complaint of Alleged Access Barrier

Code of Civil Procedure 425.50

Restroom Requirements for Permanent Food Facilities

Health and Safety Code 114276

California Legislation

The following is a list of resources to aid the CASp in understanding California law with regard to claims of noncompliance to construction-related accessibility standards and access for individuals with disabilities to public accommodations.

SB 262 (Kuehl, Chapter 872, Statutes of 2003)

Senate Bill (SB) 262 established the Certified Access Specialist Program. SB262 was passed by the California Legislature and approved by the Governor on October 12, 2003. The chaptered text of the bill with details of California law as established and as amended can be accessed by the following link:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB262

SB 1608 (Corbett, Chapter 549, Statutes of 2008)

SB1608 was passed by the California Legislature and approved by the Governor on September 28, 2008. Senate Bill 1608 established the Construction-Related Accessibility Standards Compliance Act (CA Civil Code 55.51–55.545) and established the California Commission on Disability Access (CCDA). In addition, Senate Bill 1608 includes the following provisions:

- Reduced statutory damages from \$4000 per violation to \$4000 per occasion.
- Offers legal benefit of "qualified defendant" status to a business/facility owners with a CASp Inspection Report issued according to CRASCA.
- Places requirements for continuing education in disability access for architects.
- Provides for DSA to submit the CBC for certification by the US Department of Justice.
- Places requirements for continuing education in disability access for inspectors, plans examiners, and building officials.
- Requires attorneys to include a written advisory with demand letters.

The chaptered text of the bill with details of California law as established and as amended can be accessed online:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080SB1608

SB1186 (Steinberg, Chapter 383, Statutes of 2012)

Senate Bill 1186 was passed by the California Legislature and approved by the Governor on September 19, 2012. Senate Bill 1186 includes the following provisions and amendments to existing law:

- Reduces statutory damages of business/facility owners with a CASp Inspection Report issued according to CRASCA from \$4000 per occasion to \$1000 per occasion.
- Discipline of an attorney in violation of Civil Code 55.3.
- Establishes requirements for demand letters alleging a construction-related accessibility claim.
- Requires attorneys to send copies of demand letters to the California State Bar and the CCDA.
- Redefines terminology in the Construction Related Accessibility Standards Compliance Act (CA Civil Code 55.51–55.545).
- Places limits on statutory damages for holders of inspection reports issued according to CRASCA, for small businesses, and for construction approved through the authority having jurisdiction.
- Requires disclosure of CASp Inspection Reports in lease agreements for commercial properties.
- Stipulates requirements for a plaintiff's complaint of an alleged accessibility barrier.
- Places limits on fees for specific licensed disciplines when applying for eligibility for the CASp Examination.
- Establishes a \$1 Business License Fee to provide outreach and educational resources regarding disability access, and to provide continuing education for and increase the number of CASp.
- Establishes reporting requirements for the CCDA.

The chaptered text of the bill with details of California law as established and as amended can be accessed by the following link:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1186